

Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of Federal-State Joint)	CC Docket No. 96-45
Board on Universal Service)	FCC 03J-1

Reply Comments of
Montana Public Service Commission

1. INTRODUCTION

The Montana Public Service Commission (MPSC hereafter, Chairman Bob Rowe not participating) appreciates this opportunity to file these reply comments to the Federal-State Joint Board's solicitation of comments relating to high-cost universal service support and the ETC designation process. As we expand below, the MPSC wishes to express its support for certain initial comments filed by each of the Montana Universal Service Task Force (MUST) and the Montana Telecommunications Association (MTA).¹ However, before we reach that discussion there is a question of whether the issues in this solicitation of comments by the Joint Board were the right target for the FCC to set before the Joint Board.

The MPSC believes that the overarching issue the FCC should have placed in the Joint Board's lap is how to define, not implement an unclear definition of, "universal service." Before getting lost in the trees of detail in the Joint Board's solicitation of comments, the FCC should stand back and ponder the basic question that caused it to

¹ See respectively MUST's and MTA's comments filed May 5, 2003 in CC No. 96-45, FCC 03J-1.

charge the Joint Board with this solicitation of comments. The MPSC believes that question is essentially what Congress intends by the “preservation and advancement of universal service.” Is Congress’ intent a static or a dynamic goal in terms of the funded services, and which providers of those funded services, by means of what technology, best serve the public interest. Before getting lost in the morass of detailed questions of, for example, on what cost basis wireless carriers should receive universal service funds, or how to determine who provides a primary line, the FCC should pause to contemplate the basic policy questions that are at issue. This reflection should be done in the context of other related questions such as did Congress, and does Congress now, intend to constrain the pursuit of universal service by limiting the size of any necessary universal service fund.

The FCC has evolved policies and rules that effectively interpret Congress’ use of the policy “universal service.” Now having made those interpretations, the FCC seeks to revisit and fine tune the implementation of those policies. The MPSC believes the FCC should first consider the larger policy issues. Once those issues are illuminated and resolved, as best they can, the appropriate implementation details as in the myriad of questions in this Joint-Board solicitation can be efficiently addressed.

2. The Pursuit of Universal Service and Competitive Markets

In the initial comments filed by each of MUST and MTA, there is keen recognition of the friction that rural telecommunications companies face. This friction emerges from the apparent joint goals of universal service and the pursuit of more competitive markets. The MPSC believes that these two goals can be reconciled. However, the reconciliation

may require changes in the FCC's rules and policies. The critical direction the FCC must take now is to embrace and support allowing State Commissions to separately establish service quality rules that are competitively neutral and that will require comparable service quality of all, wireline and wireless alike, carriers. By taking that direction now the FCC would allow for the fair and equitable treatment of incumbent and competitive eligible telecommunications carriers (IETCs and CETCs respectively). Such action will serve to avert wreaking havoc on the quality infrastructure developed by Montana's IETCs.

Rural local exchange carriers in Montana have, as MUST's comment note, sparsely populated service territories. The small independent rural carriers in Montana have distinguished themselves in terms of the kinds of services they provide to their customers. These small rural carriers have collaborated to develop a telecommunications infrastructure in Montana that allows them to offer their customers a smorgasbord of basic and advanced services. In contrast, such services as DSL are only sparsely offered in the exchanges of Montana's major non-rural carrier.

The process by which CETCs receive portable universal service (US) funding is well documented in MUST's and MTA's comments. The MPSC agrees that the mechanism by which US funds are ported from IETCs to CETCs, however, will indeed threaten the ability of rural ILECs that are ETCs to continue to offer high quality service to their customers, a standard of service quality not apparently matched by wireless CETC's service offerings.

The opening of all telecommunications markets to competition is a laudable goal, but not one the MPSC believes that Congress intended to be pursued blindly in the

Telecommunications Act of 1996 (1996 Act). The joint pursuit of increased competition and universal service need not be a public interest pursuit at war with itself. The rural ILECs should have first draw upon limited US funds in amounts that support the high quality infrastructure they have evolved. It may indeed be time for a separate US fund for other wireless CETCs, especially if there exists a dynamic interpretation of “universal service”, a static interpretation of the funding level and fear of a high-flying US fund driven by CETCs that generally offer complementary and not substitute services.

Whether wireless CETCs should be allowed to draw upon any federal US fund principally developed for IETCs should depend upon their offering comparable service quality – not just the supported services. Both MTA and MUST support such requirements and so does the MPSC. Arguably, state commissions are best suited to make such determinations.² The FCC should affirmatively state that such state actions do not comprise entry barriers and that such actions must precede the designation of any competitive carrier as an ETC. The competitive neutrality nature of MUST’s comments are relevant in this regard. Even though many of MUST’s members have wireless operations, these members have not sought CETC designation in Montana: MUST is not arguing to just limit its wireless competitors’ access to federal US funding.

3. Conclusion

The MPSC believes that the effort here seems to have placed the proverbial cart before the horse. If that arrow cannot now be placed back in its quiver and the broader public policy issues debated first, then we continue the patchwork of fixes that

² See the Federal-State Joint Board’s July 10, 2002 Recommended Decision (CC 96-45, FCC 02J-1, at paragraphs 60-63).

characterize much of the comments the Joint Board will receive in response to this solicitation. The comments we endorse here that are made by MUST and MTA deserve serious consideration by the Joint Board and in turn the FCC.

Dated this 3rd day of June, 2003.

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